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TRANSLATION

OF THE

CHINESE BANKRUPTCY CODE OF 1905.

BY

CHANG NIEH-YÜN (張籋雲)

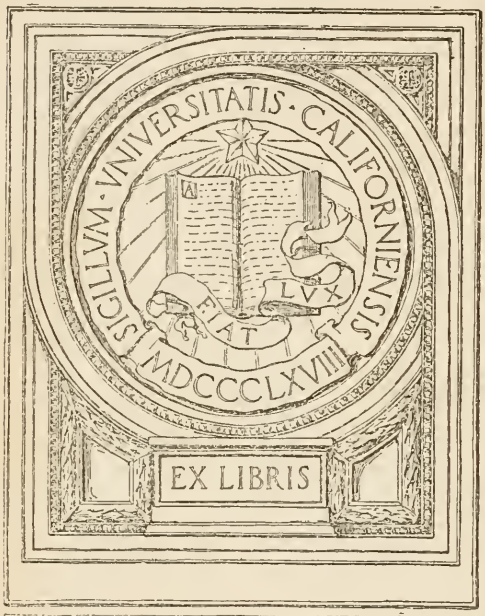
WITH AN EDITORIAL

BY

J. H. TEESDALE.

China. Laws, statutes, etc. HG3769 C62 1905

GIFT OF
HORACE W. CARPENTIER



China, Laws

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SHANGHAI:
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Carpenter

EDITORIAL.

IN committing a translation by Mr. Chang Nieh-yun, of the new Chinese Bankruptcy Code to the Press, I hark back a few months to the time when he and I first agreed to embark on this very insignificant venture. At that time the Code had only recently received Imperial assent, viz:—the Autumn of 1905—a time when the cry of Reform was very loud and aggressive, and when, I think, the majority of Europeans in the foreign ports of China were of opinion that the judicial and administrative systems of the Imperial and Provincial Governments of China would be completely Europeanised in form, though they were possibly sceptical of such system ever being carried into effect.

The Code, as will be seen, comprises 69 Articles, and while the English Bankruptcy Act of 1883 contains 170 sections and that of 1890 31 sections, apart from the various sets of Bankruptcy Rules put into force under the provisions of those Acts, there is no doubt that the object of the advisers of His Imperial Majesty, although merely a beginning, was a laudable one—viz: to place on record for universal application in every Magistrate's yamên throughout the Empire a set of rules to cover the insolvency of its subjects, and the manner in which the debts of an insolvent might be adjudicated upon by a party appointed by the Creditors under the aegis of the Court, and the insolvent himself enabled, after discharge, to start again with a clean slate, instead of languishing for perhaps the remainder of his life in some foul cell.

But have the Chinese during the last 12 months continued to exhibit that anxiety for foreign judicial systems? And do we see, where those systems have become law, that readiness

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to put them into force? The abolition of the cangue and the bamboo as methods of punishment (now—as regards the cangue—fortunately re-introduced) have been effected throughout China only in the Mixed Court of the International Settlements at Shanghai, and I doubt very much whether, if Counsel pleading in that Court quoted one of the Articles of the Bankruptcy Code, the Magistrate would have a copy of his own to refer to. Instances of extortion of evidence by torture, moreover, have occurred quite recently in the Native City of Shanghai, although such punishment was abolished by Imperial Decree on 2nd May last.

I shall not regret, however, the very inconsiderable time I have devoted to giving my indifferent services to Mr. Chang Nieh-yun, for the study of the Chinese Mind in evolving this Code along foreign lines, with due allowance for the inclusion of Chinese custom as far as consistently possible, has not been devoid of interest.

The Code was the work of certain Chinese students educated in Japan employed under the Shangpu or Ministry of Commerce, which subsequently blossomed into the Nung Kung Shangpu, or Ministry of Agriculture, Industry and Commerce, and were revised by H.E. Wu Ting-fang, formerly Vice-President of the Waiwupu, and for some time Vice-President of the Ministry of Punishments, charged with the Revision of the Legal Code in China, a work which he had to relinquish when he resigned office. He was the first Chinese Barrister at the English Bar, and was "called" under the name of Ng Choy.

In editing the Code I have advised Mr. Chang to make the translation as free as possible, and, in doing so, some difficulty has been obviated by the fact that, as already stated, it is based on foreign law.

J. H. T.

SHANGHAI, *6th August, 1907.*

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商部奏定破產律全文

第一節　呈報破產

第一條　商人因貿易虧折或遇意外之事不得已自願破產者應赴地方官及商會呈報俟查明屬實然後將該商破產宣告於衆

第二條　該商呈報時應聲明破產緣由將各項帳簿送呈地方官查閱　應呈各項帳簿如左　一歷年收支簿（以十年之內爲限）二現存銀錢簿　三現存貨物簿（註明價值）　四現存產業簿（田地房屋之類均應註明價值及單契上之戶名號數）　五現存傢具簿（貴重之物註明價值）　六借放對數表（欠人若干人欠若干並有無字據帳摺均須註明）

第三條　地方官收到各項帳簿於逐頁騎縫處分別蓋印移交商會加蓋圖記備查

第四條　宣告破產後除該商必需之衣服傢具外所有財產貨物由地方官先行查封交商會代管

BANKRUPTCY CODE DRAWN UP BY THE BOARD OF COMMERCE AND SANCTIONED BY IMPERIAL EDICT.

Section 1. Filing Petition of Bankruptcy.

Article 1.—Any merchant who, owing to losses in business or owing to misfortunes is constrained to declare himself a bankrupt shall petition the local authorities and the Chamber of Commerce, who will, after examining into the matter and finding it in accordance with the facts, adjudicate him a bankrupt and publish the fact.

Article 2.—The merchant on filing the petition shall state therein the reasons for his insolvency and submit his various account books to the local authorities for examination. The various account books to be examined are the following:—

1. The Receipt and Payment Book for the ten preceding years. 2. Book showing the existing cash. 3. Stock Book with values noted. 4. Book showing the existing property (values for land and houses should be noted, also the names and numbers on the deeds and documents). 5. Furniture and implements of trade (values for expensive articles must be given). A list of loans made and obtained (the amounts of what he owes and is owed, and whether or not they are covered by documents and account books should be noted).

Article 3.—The local authorities on receipt of these account books shall affix their seals at the junction of all the pages (so that the consecutive pages shall each receive a portion of the impression) and send them to the Chamber of Commerce for it to affix its chops as well for purposes of reference.

Article 4.—After adjudication in bankruptcy, with the exception of clothing and furniture absolutely necessary to the

第五條　呈報破產後若有妥實保人具結准該商在外聽候傳喚但不得擅離處所無保人者留住商會免其管押

第六條　若該商倒閉不自呈報破產先由各債主查知赴地方官呈報者先傳該商到案訊係屬實並無倒騙情弊仍照以上各條辦理

第七條　公司呈報破產由董事及查帳人具呈無論合資股份應將股東姓名住址開列附入

第八條　凡雖非商人有因債務牽累自願破產者亦可呈明地方官請照本律辦理

第二節　選舉董事

第九條　宣告破產後五日內商會應於該商同業中遴選公正殷實者一人任董事之責清理破產一切事務

said merchant, all moneys, property and goods shall be sealed up by the local authorities and handed to the custody of the Chamber of Commerce.

Article 5.—After the petition in bankruptcy has been filed and on a bond being given by a reliable surety, the said merchant shall be permitted to reside at large until summoned, but he shall not leave the place without the requisite authority. A bankrupt having no surety shall be compelled to reside at the Chamber of Commerce, but shall not be detained in custody.

Article 6.—If a merchant whose business is insolvent shall not have filed his own petition as aforesaid and such insolvency shall have first been discovered by his creditors, the creditors may petition the Local Authorities to declare him a bankrupt. They shall summon the merchant before them and examine him. If the authorities are satisfied as to the insolvent condition of the merchant's business and that he is not likely to attempt to defraud, the local authorities shall deal with the matter in accordance with the foregoing articles.

Article 7.—Should a Company file its own Petition in Bankruptcy the petition shall be signed by the Directors and the Auditor. Whether the Company be a partnership or a public Company, the shareholders' names and addresses shall be appended to the petition.

Article 8.—Should anyone not being a merchant, being encumbered and burdened by debts desire to become a bankrupt, he may petition the local authorities to deal with the matter according to this Code.

Section 2. Election of Trustee.

Article 9.—Within five days of adjudication in bankruptcy the Chamber of Commerce shall select from the members of the said merchant's particular trade a just, reliable and

第十條　商會舉定董事後該董卽可稟官啟封督同破產者將現存銀錢貨物產業傢具及一切字據逐件點收開具淸單送呈地方官及商會存案後卽歸該董經理

第十一條　破產者與人往來函件董事有檢閱之權

第十二條　董事如遇帳目不明之處可隨時向破產者查問

第十三條　董事辦理不善商會可隨時另舉更換前董應將經手事件交代淸楚由後董書立收據報官存案

第十四條　董事經理財產貨物及開支事內費用如有侵蝕浮冒等弊商會或各債主查明實據准其報官追繳

第十五條　董事經理事件完結時由各債主公議在攤還債欵內酌提酬勞

substantial party to take upon himself the responsibilities of a trustee to wind up and settle all the affairs of the bankrupt.

Article 10.—After the appointment of the Trustee by the Chamber of Commerce the Trustee may petition the local authorities to open the sealed up goods and property. The Trustee in company with the bankrupt will receive all the moneys, goods, property, furniture and documents and will make out an inventory thereof in detail and hand it to the local authorities and Chamber of Commerce to be placed on record. Thereafter the Trustee shall be responsible for the safe custody of the said property.

Article 11.—The Trustee shall be entitled to inspect all letters or correspondence between the bankrupt and others.

Article 12.—The Trustee may require of the bankrupt all explanation necessary in connection with the accounts.

Article 13.—In the event of the Trustee not performing his duties satisfactorily the Chamber of Commerce may at any time elect another Trustee to supersede him. The outgoing Trustee shall then duly hand over all the affairs of the bankrupt and the incoming Trustee shall grant a receipt and report to the local authorities to place the matter on record.

Article 14.—Should the Trustee in the management of moneys, property and goods and in making payments be guilty of malpractices, such as appropriating funds to his own use or fraudulently making out false accounts, the Chamber of Commerce or creditors may, on obtaining proof of the same, report to the local authorities to press for the return of such moneys.

Article 15.—After the Trustee has settled and wound up the affairs of the bankrupt in his charge the creditors shall decide at their discretion on the amount of the Trustee's remuneration and appropriate out of the estate sufficient to meet it.

第十六條　董事經理事件完結後須將辦理情形具呈報明地方官核准結案始可卸責

第三節　債主會議

第十七條　凡宣告破產後由地方官出示諭令各債主開明所欠本息清單並所執字據送交商會核辦宜視債主程途遠近酌定期限商會應將以上情節登報布告

第十八條　商會收到各債主單據加蓋圖記後即掣給收照爲憑結案後所有單據或應塗銷或應發還各債主應將收照繳由商會分別辦理

第十九條　商會應將各債主單據並破產者各項帳簿字據發交董事核對無誤即定期知照各債主會議

第二十條　屆期各債主到者未齊商會應再展期登報布告若展期已滿尚有一二債主未到而所佔債額不及四分之一董事即可邀同已到債主先行議決未到之債主祇能聽從公斷不得別生異議

Article 16.—After settlement of the bankrupt's affairs by the Trustee the latter shall present a report of his administration to the local authorities for approval and have the same wound up before he is relieved of his responsibilities.

SECTION 3. MEETINGS OF CREDITORS.

Article 17.—After adjudication in bankruptcy the local authorities will issue notifications ordering all creditors to make out lists of their claims, both in respect to principal and interest, and hand them with any documents they hold to the Chamber of Commerce to be examined and dealt with. They shall decide on a limit of time for the creditors doing so in proportion to the distance that the residence of the creditor is from the Chamber of Commerce, and the Chamber of Commerce shall advertise the circumstances in the newspapers.

Article 18.—The Chamber of Commerce, after having received the lists and documents, will affix their seal to them and give receipts for the same for purposes of proof. After settlement of the matter all lists and documents, whether to be cancelled or returned to the creditors, shall be separately dealt with by the Chamber on the receipts for same being returned to them.

Article 19.—The Chamber of Commerce shall hand the creditors lists and documents and the bankrupt's account books and documents to the Trustee for verification, and when found in order, he will fix a date for a creditors' meeting and notify the creditors accordingly.

Article 20.—At the time of the meeting, if all the creditors have not arrived, the Chamber of Commerce shall adjourn the meeting and publish a notice thereof. If on expiry of the extension of time there shall still be certain creditors not present whose combined claims shall not amount to a fourth part of the total claims, the Trustee may invite those creditors present

第二十一條　各債主議決之權以從多數爲定如意見相同之債主佔有債額四分之三亦可議決

第二十二條　各債主應同董事公定平均成數一律收回不得擅取該商貨物作抵並不得串通他人出頭追討

第二十三條　債主會議時呈報破產具結及列借劵中之保人均應到場隨同料理

第二十四條　債主會議時許破產者在場聽議如有與己損害事准其申訴聽憑公斷

第四節　清算帳目

第二十五條　債主單開數目或有不符應由董事調查債主帳簿手摺回單信件逐一核對並可邀集關於此事之經手人等當場詢問

第二十六條　未到期之債及各項期票自呈報破產之日起均准作爲到期提前辦理

第二十七條　該商與人賣買借放之事雖已訂立契約尚未交貨付銀經呈報破產均應作廢

to confer and decide on the matter. Those creditors not present must be bound by the joint decision of those present.

Article 21.—Resolutions may be passed by a majority of creditors, but should creditors whose claims amount to three-fourths of the total indebtedness concur, the resolutions they pass shall bind the creditors.

Article 22.—The creditors should jointly with the Trustee fix a fair dividend and shall accept such in payment of their claims. They shall not without authority appropriate the bankrupt's goods in settlement of their claims, nor shall they prevail upon other parties to press for payment in respect of the same.

Article 23.—At a creditors' meeting all the sureties to the bankrupt's bond and those who have guaranteed any notes of hand by the bankrupt shall be present to assist.

Article 24.—At the meetings of the creditors the bankrupt shall be permitted to be present to hear the discussions. In any matter prejudicial to him, he shall be permitted to make a verbal statement for joint decision.

Section 4. Winding up Accounts.

Article 25. Should any errors or misstatements be discovered in any claims, the Trustee shall examine the creditors' account books, pass books, chit books, and letters and compare them and may also invite any middlemen concerned to an interview to make enquiries of them.

Article 26.—From the date of the filing of the petition in bankruptcy all debts not yet due and all sight drafts shall be regarded as due as at the date of the petition and dealt with before the actual date they fall due.

Article 27.—On presentation of a petition in bankruptcy all purchases, sales or loans made or obtained, although deeds or contracts for them have been entered into, but the money

第二十八條　債主如有互欠破產者之欵除准其抵銷外所餘積額應與各債主一律辦理

第二十九條　無論何項公司呈報破產除註册時聲明有限應照公司律第九條辦理外如係無限或內有股東擔負無限責任者將公司產業變償尚有不足之數由董事會同公司總司理人算明每股應攤還債額若干登報布告各股東知悉若股東將所認股分應攤之債數還清董事應掣予收照報由商會移知地方官立案卽與該股東無涉

第三十條　公司內各股東償債應由董事會同公司總司理人體察各股東情形於應攤債額內如有股東措繳不足准其分別量繳收齊欵項通盤扯定成數令各債主收回

第三十一條　自宣告破產之日起該商所欠債項均免算利息惟有照第三十五條辦理時不在此例

in respect thereof has not been paid, shall be deemed null and void.

Article 28.—The claims of creditors who may be indebted to the bankrupt shall, after permission has been granted for their claims to be set off against their debts, all be treated pari passu in respect to the balance outstanding.

Article 29.—With the exception of Companies having registered limited liability (who shall be dealt with according to Art. 9 of the Company Code), in the case of all Companies of whatever character, if unlimited or having shareholders assuming unlimited liability, should there be any deficiency after liquidation and dividends have been distributed among the creditors of a Company, the Trustee shall, in conjunction with the Director or Manager of the Company, reckon the amount of liability which should be apportioned to each shareholder and advertise it in the newspapers for their information. On a shareholder discharging the debt apportioned to his share or shares the Trustee shall give him a receipt and report to the Chamber of Commerce, who shall communicate the fact to the local authorities for purposes of record, and the matter shall cease to concern the said shareholder.

Article 30.—In the payment of debts by the shareholders of such Company the Trustee, in conjunction with the Manager or Director of the Company, shall take into consideration the financial circumstances of the shareholder. If in the payment of the allotted apportionment any shareholder shall be unable to effect payment in full he should be permitted to pay according to his ability. On receipt of all the payments an average percentage shall be decided on and the creditors will be directed to accept the same.

Article 31.—From the date of adjudication in bankruptcy all the bankrupt's debts shall be exempted from interest; provided that this shall not apply when they are dealt with under Art. 35.

第三十二條　抵押主宜報由董事查明抵押之物實在倒閉兩月以前並無寄頓等弊方准抵押主將物實行管理及拆動變賣

第三十三條　抵押主宜將印契稅單或所存字據呈驗經商會簽字地方官蓋印後方准將抵押之物實行管理並聽變賣如係產業即可過戶毋庸另立絕賣憑據

第三十四條　抵押之物須經董事估計價值若逾於所欠之數除抵還本息外應將餘欵交董事歸入財產項下攤還各債主抵押之物董事有贖回另售之權

第三十五條　抵押之物因逆料市價勢必騰貴其數將逾所欠之外者各債主可商同董事知照抵押主展限三個月歸董事待價變賣限滿無論已未變賣或贏或虧仍由董事按月計息連同原本算還抵押主收回

第三十六條　抵押之物慮及跌價或性質易於霉壞不能久屯經抵押主告知董事查明果無別項情節立即簽字許其變賣如係標封貨物亦准先行變價以免耗折

Article 32. All mortgagees shall report to the Trustee as to the articles mortgaged in order that he may make enquiries, and if he shall find that the mortgage has been entered into two months before the bankruptcy, and that the same articles have not been fraudulently placed under somebody else's charge, he may then permit the mortgagees to retain possession of the articles or deal with them at their discretion.

Article 33.—A mortgagee shall hand all stamped deeds, tax receipts and other existing documents to the Chamber of Commerce for signature and the local authorities for affixing of seals before he will be permitted to assume actual possession of the articles mortgaged or dispose of them. If the property is real property it may be transferred immediately without making out another irrevocable deed of sale.

Article 34.—The value of articles mortgaged shall be estimated by the Trustee. Should it exceed the amount of the claim, the balance shall, after paying off the principal and interest, be returned to the Trustee and credited to the estate, to be divided among the creditors. The Trustee shall have power to redeem the article mortaged and resell the same.

Article 35.—In the event of a rise in the market price of the article mortgaged being anticipated, and that such price may exceed the claim, the creditors may confer with the Trustee in regard to notifying the mortgagee of an extension of time for three months, during which time the article shall be handed to the Trustee to await sale at a good price. On the expiration of this period, whether or not the article has been sold and a loss incurred or profit realised, the Trustee shall calculate interest by the month and pay it with the principal moneys to the mortgagee.

Article 36.—Should the article be of a perishable or depreciatory nature, the Trustee upon the facts being reported to him by the mortgagee, and finding the report bona fide, shall

第三十七條　抵押之物如遇重疊典借欵項者其物提歸董事變賣得價無論押之前後數之多寡合兩家欵目分出股份將所賣之價按股均分

第三十八條　商人出有向支期票便用若經受票人持票到向支之莊號簽字承認如期付欵後雖遇出票人破產受票人屆期仍可向該莊號憑票支欵倘此項期票未經向支之莊號簽字若遇出票人破產該莊號可以不認此票

第三十九條　破產者放出之帳經董事查核後開明各欠戶數目清單送交地方官出示限各欠戶於一月內赴商會覆對明白仍按原立期限清還若欠戶避匿不到或延悞不交者由商會報官追繳

第四十條　帑項公欵經商家倒閉除歸償成數仍同各債主一律辦理外地方官應查明情節如果事屬有心應照倒騙律嚴加治非

consent in writing to its disposal. Should the same be sealed goods they may also be sold to prevent losses.

Article 37.—In case the articles mortgaged shall have been mortgaged twice over or oftener, the same shall be taken possession of by the Trustee for sale, and the price realised shall be divided equally in proportion between the mortgagees, irrespective of the priority or amount of their loans.

Article 38.—In the event of the bankrupt having issued a bill of exchange and the payee having produced it at the bank where it is payable, and the bank having endorsed and accepted it, in spite of the bankruptcy of the drawer, the payee may cash it at the said bank on due date. Should the bill have not been presented for endorsement by the bank, the bank, after the drawer's bankruptcy has taken place, may refuse to accept the same.

Article 39.—As regards debts due to the bankrupt, after the Trustee shall have verified them, he shall make out a list of the names of the debtors and the amounts of their debts and hand it to the Local Authorities, who will issue a notification fixing a limit of time of one month, within which the debtors shall attend at the Chamber of Commerce to verify their debts and pay them in accordance with their original contracts. Should they intentionally absent themselves, or neglect to pay, the Chamber of Commerce shall ask the officials to press for payment.

Article 40.—In the event of the bankruptcy involving government or public funds, the local authorities, besides allowing the government to receive a dividend pari passu with the other creditors, shall investigate the matter, and if they shall find it the result of embezzlement, they shall punish the bankrupt severely, as if the case was one of fraudulent bankruptcy.

第四十一條　事內經費可由董事在破產者財產項下覈實支用開單送交商會及各債主查核認可後方准支銷

第五節　處分財產

第四十二條　董事及各債主查明破產者實係情出無奈並無寄頓藏匿等弊應將現存財產貨物公估變賣得價並追清人欠之欵通盤核算定出平均成數攤還各債主收回各具領狀二紙分送地方官及商會存案

第四十三條　他人寄存之財產貨物應向董事告明查係屬實方准原主取回

第四十四條　呈報破產前半月內批買之貨物未經付欵原件尚未拆動者賣主可向董事告明查係屬實准將原貨物取回

第四十五條　破產之商不得涉及其兄弟伯叔姪暨妻並代人經理之財產凡有財產照商會章程赴商會註冊將契券呈驗加蓋圖記或邀親族見證簽字方爲有據

第四十六條　一家財產業經分析如在一年以前曾在商會呈報存案者破產時准由董事查明告知各債主可免其牽入破產案內議償

Article 41.—All expenses in the matter may, after being duly scrutinized, be prepared and submitted to the Chamber of Commerce and the creditors for their examination and approval before the amounts can be paid.

Section 5. Disposal of the Estate.

Article 42.—The Trustee and the creditors having satisfied themselves that the bankrupt's insolvency took place through no fault of his and that it was free from fraud or from fraudulently placing his property and goods in other's custody for the purpose of concealment, will jointly value the moneys, property, goods and chattels and convert them into cash and call in all debts owing, and then, out of the total proceeds calculate the dividend to be paid to the creditors, who on receiving the same will give receipts in duplicate and submit them to the Local Authorities and the Chamber of Commerce to be placed on record.

Article 43.—In the event of there being moneys, property, goods or chattels belonging to others entrusted to the bankrupt's care, he shall notify the Trustee, and if the same shall be found correct, the owners will be permitted to resume possession of the same.

Article 45.—The liability of any bankrupt merchant shall not extend to his brother's, uncle's, nephew's or wife's moneys and property and those moneys and property entrusted by others to his care. All such moneys and property shall be registered according to the regulations of the Chamber of Commerce at the Chamber, when the relative deeds and documents will be stamped and noted and some relation or clansman shall sign them as a witness before they shall be deemed proved.

Article 46.—If there has been a division of the family estate, and in the course of one year previous thereto such division shall have been reported to the Chamber of Commerce

第四十七條　破產者在他號附有資本應將股票合同交與董事歸入財產項下備償惟須憑董事向該號他股東商定辦法各債主不得逕向索欠

第四十八條　倒閉之商若將財產償還各債後實係淨絕無餘並無寄頓藏匿情弊應由董事向各債主聲明准於未攤分以前在財產項下酌提該商贍家之費約數二年用度以示體恤

第六節　有心倒騙

第四十九條　凡商人吞沒資財詭稱虧折有心倒騙者經債主控告或商會查知報由地方官應先將現存財產貨物查封交商會代管一面緝提該商管押審辦將倒騙情形出示佈告

第五十條　倒騙之案仍由商會選舉董事辦理一切事務

for record, the Trustee shall be permitted to verify the matter and notify the creditors so as not to involve such property in the winding up of the bankrupt's estate.

Article 47.—If the bankrupt has capital in any concern, he shall hand such capital and partnership agreement to the Trustee to be included in the estate for division, but the manner in which the matter shall be dealt with shall be arranged between the Trustee and the other partners and the creditors may not directly demand their claims from such partners.

Article 48.—If the bankrupt after the liquidation of his debts with his assets has actually nothing left, and is not guilty of any malpractices such as placing his property under another's care for purposes of concealment, the Trustee shall inform the creditors and they may thereupon at their discretion set apart out of the estate, before its division, a sum for maintenance of the bankrupt's family sufficient to cover about two years' expenses (to show compassion).

SECTION 6. INTENTIONAL FRAUDULENT BANKRUPTCY.

Article 49.—If a merchant has wrongfully misapplied money, and falsely declares that he has suffered losses and intentionally becomes fraudulently bankrupt, and is sued by his creditors, or his fraud is discovered by the Chamber of Commerce, the creditors shall report to the local authorities, who shall seal up all his existing moneys, property, goods and chattels and hand them over to the custody of the Chamber of Commerce, at the same time tracing and arresting the said merchant and imprisoning him for trial and issuing a proclamation giving the particulars of the fraudulent bankruptcy.

Article 50.—The Chamber of Commerce shall in these circumstances also elect a Trustee to deal with the affairs of the fraudulent bankruptcy.

第五十一條　商人席捲鉅資倒騙潛逃並無帳簿可查地方官應即行文通緝一面標封現存產業貨物由商會舉董邀集各債主眼同查點造具清册並彙齊各債主所呈單據開列戶名欠數報官存案先將所存產業貨物估價變賣通盤核定成數令各債主收領俟該商緝獲到案再行追繳

第五十二條　凡有心倒騙之案除將財產貨物變價備抵外酌量情節處監禁二十日以上三年以下或罰金五十圓以上一千圓以下或監禁與罰金併科

第五十三條　凡左列各項情形以倒騙論　一關於契紙帳簿字據等類隱匿銷燬或塗改偽造及虛揑者　二於倒閉前將財產貨物寄頓他處或詭託他人名下或虛立債主戶名或先向外欠折扣收帳或串通他人出頭冒認者　三爲損害債主起見於倒閉前一月內將貨物賤值售脫或不惜重利圖借欵項或濫出期票使用者　四平日用度奢侈逾恆或濫向本號支取銀錢貨物或買空賣空冀圖僥倖並無可望之欵

Article 51.—If a merchant shall abscond with a large sum of money and no account books shall be found, the Local Authorities shall enter into communication with the authorities of the adjoining districts with a view to his arrest, and at the same time seal up his remaining property and goods. The Chamber of Commerce shall elect a Trustee to call together the creditors and witnesses and inspect the property and make an inventory thereof, and also collect the notes of hand and documents presented by the creditors and compile a list of the names and amounts of claim and report to the local authorities for purposes of record. Such property and goods shall first be valued and disposed of and a dividend declared and paid to the creditors. When the merchant has been traced and apprehended and brought to the Court he will be pressed to make further payments.

Article 52.—In the case of intentional and fraudulent bankruptcy besides his moneys, property, goods and chattels being administered, the merchant shall be sentenced, according to the circumstances of the case, to imprisonment for a term extending from twenty days to three years or fined from 50 to 1,000 Dollars, or imprisoned and fined.

Article 53.—The following acts shall be regarded as cases of fraudulent bankruptcy: (1). Falsifying, altering, destroying or concealing deeds, account books or other documents. (2). Prior to the bankruptcy depositing moneys, property, goods and chattels elsewhere or declaring them to be owned by others, falsely giving fictitious creditors' names, collecting his accounts at a discount or prevailing upon other parties being in collusion with him to accept his credits as their own. (3). Within one month previous to the bankruptcy, selling off goods at low prices or borrowing money and paying (not grudging) heavy interest thereon, or recklessly issuing drafts with a view to injuring his creditors. (4). Living extravagantly in excess of reasonable bounds, reckless-

以致虧折者　五借債之時並無的欵可望償還或經營商業並無確實資本者　六既經呈報破產故意延緩不將財產貨物一切權利及放出債項在地方官或董事處悉行呈報或不將財產貨物除本人及家屬需用之衣服外悉行交出者　七既經呈報破產私自清還一二債主致各債主所得未能彼此平均者

第五十四條　犯第五十三條一二三四等項者必待各債主告發經董事查有確實證據方可報官審辦

第五十五條　在倒閉前兩月以內該商將財產貨物故意贈送與人或假托抵押債主或將未到之債提前償還有確實證據者各債主可以不認由董事將前項追回歸入財產項下辦理

第五十六條　凡倒騙之商不得沾第五條第四十八條之利益

第五十七條　犯第五十三條第二項之同謀勾串人應照爲從於首犯罪上減一等科斷

ly drawing out moneys or withdrawing goods from his business, or engaging in speculation without having any visible assets and thereby suffering losses. (5). Borrowing money without any definite visible assets or trading without any actual capital. (6). After filing his petition in bankruptcy, intentionally delaying in reporting to the Local Authorities or the Chamber of Commerce all his moneys, property, goods and chattels, benefits and credits, or, with the exception of the necessary clothing for himself and family, not handing over all his money, property, goods and chattels. (7). After filing his petition in bankruptcy fraudulently repaying one or two of the claims of his creditors in full; thus causing an inequality in the division among the creditors.

Article 54.—Should the creditors charge the bankrupt with any one of the acts of fraudulent bankruptcy Nos. 1, 2, 3 or 4 in the foregoing article, the same shall be investigated by the Trustee, and if substantial proof is forthcoming, it shall be reported to the local authorities, who shall deal with the matter.

Article 55.—If within two months before the bankruptcy the said merchant shall have intentionally made gifts of his money, property, goods or chattels, or shall have falsely declared them mortgaged to creditors, or shall have repaid any debt before it has fallen due, and there shall be substantial proof thereof, the creditors may refuse to recognise the transactions, and the Trustee shall press for the return of the amounts, and credit them to the estate for division.

Article 56.—A fraudulent bankrupt may not participate in the benefits provided by Articles 5 and 48.

Article 57.—Any party acting in collusion in the breach of Clause 2 of Article 53 shall be deemed an accessory, and shall be sentenced to punishment one degree less severe than the principal offender.

第五十八條　倒閉之商逃避無跡並無財產可償致所欠之債毫無著落者令擔保人照該借劵內所保之數認賠若擔保係二人以上俱有分任之責但借劵內並未擔認欵項及呈報破產後僅保該商人在外聽候傳訊者不在此限

第五十九條　擔保人賠償後如倒騙之商到案將所欠之債議償了結者擔保人可取回賠償之欵

第六十條　借劵中之擔保人如與倒騙之商一併逃避者應照爲從於首犯罪上減一等科斷

第六十一條　商家使用莊欵及批取貨物之欵其先有人特具信函或簽名帳簿願作擔保者如遇倒騙之商逃避應照列名借劵中之擔保人一體辦理

第六十二條　商家專任夥友經理該夥如有侵蝕挪移及私行營業等弊以致虧折倒閉者除嚴提該夥到官審實照有心倒騙治罪外應將所有財產查封歸入該商財產項下備償商會將該夥姓名及舞弊情節登報布告商家不得雇用

Article 58.—If a bankrupt has absconded and concealed himself and cannot be found (leaving no traces) and there shall be no estate for division, so that no settlement can be arrived at, a surety shall be directed to make good the amounts he guaranteed according to the notes of hand. Should there be two or more sureties they will severally be responsible. This shall not apply to sureties who do not guarantee payment of the amounts of the notes of hand, and who, after the filing of the petition of bankruptcy, merely guarantee the personal attendance of the bankrupt at the summons and hearing.

Article 59.- After the sureties have made good the amounts they guaranteed, and the bankrupt shall have appeared and arranged and settled the claims, the surety may recover from him the amounts made good.

Article 60.—In the event of any surety to the note of hand also absconding or concealing himself, he shall be dealt with as an accessory, and sentenced to punishment one degree less severe than the principal offender.

Article 61.—If a merchant draws money from a bank on credit, or obtains goods on credit, any party giving a special undertaking or signing his name in the account books as surety will, in the event of the merchant absconding as a fraudulent bankrupt, be treated on the same footing as sureties to a note of hand.

Article 62.—In the event of a merchant specially entrusting to any employee the management of his business, and the latter committing such fraudulent acts as embezzling money or trading secretly on his own account, thereby causing losses involving the bankruptcy of his employer, he shall be brought before the Court, and, if convicted, shall be dealt with as a fraudulent bankrupt. All moneys and property shall be seized and sealed up and credited to the estate for division. The

第七節　清償展限

第六十三條　商家因市面緊迫一時週轉不靈或因放出之帳暫難收回致不能應期償還債項者准其據實呈報商會邀集各債主會議酌予展限或另籌辦法免致倒閉以盡維持之誼　呈報展限應聲明各欵如左　一聲明展限緣由　二呈送歷年收支簿現存銀錢貨物產業傢具各簿及借放對數表　三聲明如何償債之法訂期何時並以何項作抵

第六十四條　債主會議展限議決之權照第二十一條辦理

第六十五條　展限以議決之日爲始不得逾一年以外若到期仍不能清償應卽呈報破產

第八節　呈請銷案

第六十六條　倒閉之商如查明情節實有可原且變產之數足敷各債至少十分之五可准其免還餘債由商會移請地方官銷案

Chamber of Commerce shall publish an account of the fraudulent act committed by the employee giving his name in full in order to notify the mercantile community not to employ him.

SECTION 7. EXTENSION OF TIME FOR REPAYMENT OF DEBTS.

Article 63.—Any merchant owing to pressure of claims on him, and to a temporary financial inability to pay his debts, or to get payment of his debts so as to duly meet his obligations, may report the true state of his affairs to the Chamber of Commerce, who may invite the creditors to a meeting to confer on the matter and grant the bankrupt an extension of time, or devise other means to avoid the necessity of his becoming a bankrupt, in order to assist him as far as they can. An application for extension of time for liquidation of debts must give the following particulars: (1). Reason for application for extension of time. (2). The submission of the receipt and expenditure book for the preceding years, and books showing existing moneys, goods, property, furniture and implements and a list of loans made and credits given. (3). A statement of the mode and date of repayment of debts and the particulars of the security given.

Article 64.—Resolutions at meetings called to discuss a question of extension of time shall be passed as provided for in Art. 21.

Article 65.—The extension of time shall commence to run from the date of the passing of the resolution, and shall not exceed one year in duration. If on expiration of the extension of time the debts cannot be paid, a petition in bankruptcy should then be filed.

SECTION 8. FILING THE REPORT OF THE SETTLEMENT OF CASE (DISCHARGE OF BANKRUPT).

Article 66.—If the circumstances under which the bankruptcy has occurred be found extenuating, and the estate is sufficient to pay a dividend of not less than fifty per cent., the

第六十七條　倒騙之商如果知悔自首將所欠之債按十成補繳清完各債主許其自新具呈商會聲明俟商會議決後移知地方官銷案免其治罪

第六十八條　地方官據商會移請銷案即行出示曉諭一面令商會登報布告以兩月爲限各債主果無異議方准銷案仍由地方官詳由督撫咨報商部查核並候年終彙咨刑部存案

第九節　附則

第六十九條　本律自奏准之日起三个月後爲施行之期

bankrupt shall be exempted from paying the balance, and the Chamber of Commerce will communicate with the Local Authorities in regard to closing the matter (discharging the bankrupt).

Article 67.—If a fraudulent bankrupt shall repent of his actions and shall give himself up, and pay his debts in full, the creditors shall give him every facility to reform himself, and shall make a representation to the Chamber of Commerce on the matter, and, when the Chamber has discussed the matter and given its consent, the latter will communicate with the Local Authorities in regard to closing the matter and remitting his punishment.

Article 68.—The Local Authorities on receipt of a request from the Chamber of Commerce to close the matter, shall issue notifications for public information, and at the same time instruct the Chamber of Commerce to advertise the fact in the newspapers for a period of two months, during which time if the creditors raise no objection, the case may be closed. The local authorities will report to the Viceroy or Governor of the province, in order that he may communicate the matter to the Board of Commerce (in Peking) for examination, and at the end of a year draw up a list of bankruptcies and communicate with the Board of Punishments in order that the matter may be placed on record.

Section 9. Supplementary.

Article 69.—After approval of these laws by the Throne they shall be put in force within three months.

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